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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/954,690	09/12/2001	Marinus A. Doomernik	AVERP3204US	8567

7590 05/10/2005
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EXAMINER

YUAN, DAH WEI D

ART UNIT	PAPER NUMBER
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1745

DATE MAILED: 05/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/954,690

Applicant(s)

DOOMERNIK, MARINUS A.

Examiner

Dah-Wei D. Yuan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 and 24-28 is/are pending in the application.
- 4a) Of the above claim(s) 1-16 and 24-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 September 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

BATTERY TESTER LABEL

Examiner: Yuan S.N. 09/954,690 Art Unit: 1745 May 4, 2005

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 8, 2005 has been entered. Claim 17 was amended.

2. The text of those sections of Title 35, U.S.C. code not included in this action can be found in the prior Office Action issued on September 2, 2003.

Claim Rejections - 35 USC § 102

3. Claims 17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Bailey (US 5,760,588).

With respect to claim 17, Bailey teaches a thermochromic battery tester label for a dry-cell battery as shown in Figure 1. The battery tester label (15) generally comprises a laminate or layered assembly having a clear (transparent) film (54), a layer of thermochromic material (24), one or more graphic layers and indicia layer (22,23), a substrate layer (20), an elongated electrically conductive circuit (layer) (18), a pressure sensitive adhesive (16) and a base laminate (30), wherein the thermochromic material and the electrically conductive layer constitute a

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battery power indicator. See Figure 2. The clear film (54), the base laminate (30) and the base layer substrate (34) are considered as the base film. The clear film is made of either polyvinyl chloride or polyester. Bailey teaches the base layer substrate (34) can be made of any desired dielectric polymer material. Generally, polyvinyl resins, polyolefin resins, polyester resins and the like would be suitable. Specific examples include polyvinyl chloride, polyethylene and polypropylene. It is preferable to use a dielectric polymer material that will shrink when assembled on a battery. As shown in Figure 7, the length of the base film is longer than the circumference of the battery when the battery label is wrapped around the battery. The battery power indicator is situated between a first layer (34) of the film and a second layer (54) of the film. The first layer of film insulates the power indicator from the battery. The battery tester label (15) further comprises apertures (openings) 46a and 46b in the base laminate. See Figure 8. They enable contact between conductive circuit (18) and either a battery terminal or can (2) on the other side of the base laminate (30). See Column 3, Line 66 to Column 4, Line 20; Column 7, Lines 60-66; Column 8, Lines 25-58.

With respect to claims 18 and 20, the clear film 54 is selected from the materials, such as polyvinyl chloride or polyester. See Column 8, Lines 38-40.

With respect to claims 18 and 19, the substrate layer (20) can be made of any desired dielectric polymer materials, such as polyvinyl chloride, polyethylene and polypropylene. See Column 8, Lines 54-61.

Claim Rejections - 35 USC § 103

4. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey (US 5,760,588) as applied to claims 17-20 above, and further in view of Gray (US 3,658,611).

Bailey teaches a battery tester label as described above in Paragraph 5. Moreover, Bailey teaches the graphic layer contains decorative ink. See Column 4, Lines 14-15. However, Bailey does not specifically disclose the nature of the decorative ink. Gray teaches the use of a decorative ink or coating as decorative decal. Different decorative inks, including colored, colorless, inorganic pigment and organic pigment, are employed. The inorganic pigments include alumina hydrate, barium sulfate, calcium carbonate, and various metal oxides, i.e., they are all non-metallic compounds. See Column 1, Lines 5-10; Column 4, Lines 47-54. Therefore, it would have been obvious to one of ordinary skill in the art to use a non-metallic pigment on the graphic layer of Bailey, because Gray teaches the non-metallic pigment can be used as a decorative ink to produce markings and design on a substrate.

5. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey (US 5,760,588) as applied to claims 17-20,23 above, and further in view of Rackovan et al. (US 6,436,496 B1).

Bailey et al. disclose a battery tester label as described above in Paragraph 5. However, Bailey et al. do not disclose the addition of an outer film bonded to the outer surface of the base film opposite the indicia layer. Rackovan et al. teach multi-layered heat shrink film for a battery comprising (a) a core layer (base film) (12) comprising a copolymer of ethylene or propylene

with an alpha olefin , (b) a skin layer (11) on the upper surface of the core layer, wherein the skin layer comprises a polyolefin or polyolefin blend, and (c) a printable layer (indicia) (13). See Figure 1. The use of two shrinkable layers and labels on the battery enables good heat stability, e.g., they don't shrink prematurely, even at temperature approaching 170°F. See Column 3, Lines 31-46. Therefore, it would have been obvious to one of ordinary skill in the art to add an outer film to the thermochromic battery tester label of Bailey, because Rackovan et al. teach the heat stability of the battery label can be improved with the additional layer of film.

Response to Arguments

6. Applicant's arguments filed on December 30, 2003 have been fully considered but they are not persuasive.

Applicant's principle arguments are

Bailey has not been found to teach or fairly suggests forming a battery power indicator between the first and second layer of the film as set forth in amended claim 17.

In response to Applicant's arguments, please consider the following comments.

Bailey et al. teach the battery tester label comprises a plurality of layers as described above. The battery power indicator is situated between a first layer (34) and a second layer (54) of the label, wherein the first layer made of a dielectric polymer material insulates the power indicator from the battery. See Figure 7.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dah-Wei D. Yuan whose telephone number is (571) 272-1295. The examiner can normally be reached on Monday-Friday (8:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan, can be reached on (571) 272-1292. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Dah-Wei D. Yuan
May 5, 2005



DAH-WEI YUAN
PRIMARY EXAMINER